

Internal Revenue Service

Number: **200411031**

Release Date: 03/12/2004

Index Number: 355.00-00

Department of the Treasury

Washington, DC 20224

Person To Contact:

, ID No.

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In Re:

Refer Reply To:

CC:CORP:B02 – PLR-145849-03

Date:

December 05, 2003

Legend

Distributing =

Controlled =

Shareholder 1 =

Shareholder 2 =

State X =

Business A =

Business B =

Business C =

Dear

This is in response to your letter dated July 31, 2003, in which you requested rulings on behalf of the above-referenced taxpayers as to the federal income tax

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consequences of a proposed transaction. Additional information was received in letters dated November 14, December 3, and December 5, 2003. The information submitted for consideration is summarized below.

Distributing is a State X corporation that previously engaged in Businesses A, B, and C. Distributing is the common parent of a consolidate group that files its returns using the cash method using a June 30th fiscal year. In 2002, Distributing formed Controlled by transferring fifty percent of its assets to Controlled in exchange for one hundred percent of the stock of Controlled (the "Transfer") in a transaction represented to qualify for non-recognition under § 351. Controlled is a State X corporation and the other member of Distributing's consolidated group. After the Transfer Controlled engaged in Businesses A, B, and C. Distributing continued to engage only in Business A.

The two owners of Distributing, Shareholder 1 and Shareholder 2, are brothers who have worked together in the business since childhood. Over the years various conflicts have developed between them relating to management style, goals, and risk tolerance. The conflicts between the two shareholders have resulted in many missed business opportunities for the corporations to grow and prosper. These conflicts intensified over the years and finally the decision was made to split the business into two smaller corporations (pursuant to the Transfer); each shareholder was the sole manager of one of the corporations. Serious problems still remain, however, as the shareholders realize that the decisions made on behalf of one corporation affect the value and business of the other corporation.

In an effort to minimize disputes between Shareholder 1 and Shareholder 2 that were adversely affecting Distributing's business, the following transaction is proposed:

Distributing will distribute all of its Controlled stock to Shareholder 2 in exchange for all of Shareholder 2's Distributing stock (the "Distribution").

REPRESENTATIONS

The taxpayer has made the following representations concerning the Transfer and the Distribution:

- (a) The fair market value of Controlled stock and other consideration to be received by Shareholder 2 in the Distribution will be approximately equal to the fair market value of Distributing stock surrendered by Shareholder 2 in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by

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Shareholder 2 as a creditor, employee, or in any other capacity other than that of a shareholder of Distributing.

(c) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(d) The financial information submitted on behalf of Controlled is representative of Controlled's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(e) The distribution of the stock of Controlled is carried out for the following corporate business purpose: to allow the controlling shareholders to go their own way. The distribution of the stock is motivated in whole or substantial part by this corporate business purpose.

(f) Distributing is not an S corporation (within the meaning of § 1361(a)), and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).

(g) There is no plan or intention by the shareholders or security holders of Distributing to sell, exchange, transfer by gift, or otherwise dispose of any of their stock in, or securities of, either Distributing or Controlled after the transaction except for transfers by gift to family members of Shareholder 1 and 2.

(h) There is no plan or intention by either Distributing or Controlled, directly or through any subsidiary corporation, to purchase any of its outstanding stock after the transaction, other than through stock purchases meeting the requirements of § 4.05(1)(b) of Rev. Proc. 96-30.

(i) There is no plan or intention to liquidate either Distributing or Controlled, to merge either corporation with any other corporation, or to sell or otherwise dispose of the assets of either corporation after the transaction, except in the ordinary course of business.

(j) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the liabilities assumed by Controlled plus any liabilities to which the transferred assets are subject.

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(k) The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(l) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled stock.

(m) Payments made in connection with all continuing transactions between Distributing and Controlled, if any, will be for fair market value based on terms and conditions arrived at by parties bargaining at arm's length.

(n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(p) The Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly, stock possessing 50 percent or more of the combined voting power of all classes of stock entitled to vote of either Distributing or Controlled, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or Controlled.

(q) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 539 (1990), if applicable) to reflect an early disposition of the property.

(r) The Transfer qualifies for treatment under § 351.

(s) The distributing corporation neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(t) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account with respect to the Controlled stock will be included in income immediately before the Distribution.

(u) Following the transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated business activities conducted by Distributing prior the transaction.

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(u) For purposes of section 355(d), immediately after the Distribution no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of each distribution.

(v) For purposes of section 355(d), immediately after the Distributions no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of Controlled entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of said corporations, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the distribution.

Based solely upon the information and representations set forth above, we hold as follows:

(1) No gain or loss will be recognized by Distributing upon the Distribution. Section 355(c)(1).

(2) No gain or loss will be recognized by, and no amount will be included in the income of, Shareholder 2 upon the receipt of the Controlled stock. Section 355(a)(1).

(3) The basis of the Controlled stock to be received by Shareholder 2 will be the same as the basis of the Distributing stock surrendered in exchange therefor. Section 358(a)(1).

(4) The holding period of the Controlled stock received by Shareholder 2 will include the holding period of the Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the exchange. Section 1223(1).

(5) Proper allocation of earnings and profits between Distributing and Controlled will be made under §§ 312(h), 1.312-10(b), and 1.1502-33.

(6) Under § 1245(b)(3), Distributing will recognize no gain and will include no amounts in income under § 1245(a) on the Transfer.

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(7) Under § 1250(d)(3), Distributing will recognize no gain and will include no amounts in income under § 1250(a) on the Transfer.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether the Transfer qualifies under § 351.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your taxpayer.

Sincerely,

Associate Chief Counsel (CORP)

By: Alison G. Burns

Alison G. Burns

Acting Assistant to Chief, Branch 2

cc: